



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/677,040	09/29/2000	Seth Bradley Noble	BA-00464	1692

7590 10/31/2005
Robert B O'Rourke
Blakely Sokoloff Taylor & Zafman LLP
12400 Wilshire Boulevard Seventh Floor
Los Angeles, CA 90025-1026

EXAMINER

NGUYEN, BRIAN D

ART UNIT	PAPER NUMBER
----------	--------------

2661

DATE MAILED: 10/31/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/677,040

Applicant(s)

NOBLE, SETH BRADLEY

Examiner

Brian D. Nguyen

Art Unit

2661

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 August 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-57 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 26-29 and 42-45 is/are allowed.
- 6) ☒ Claim(s) 1-25, 30-41 and 46-57 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 November 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 9/23/05.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 30-41 and 46-57 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 30 recites the limitation "said network" in line 9. There is insufficient antecedent basis for this limitation in the claim.

Claim 46 recites the limitation "said network" in line 11. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the

Art Unit: 2661

reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

4. Claims 1-25 are rejected under 35 U.S.C. 102(e) as being anticipated by Miklos (6,621,796).

Regarding claim 1, Miklos discloses a method, comprising: regulating a flow of sequentially addressed data across a network between a source node (sender) and a destination node (receiver) by limiting the number of units of the data traversing the network to a set called a window (see col. 6, lines 19-28) such that units are added to the window because their transmission by the source is desired; units are removed from the window because they have arrived; at the destination, units are removed from the window because they are declared to have been lost; the total number of units within the window is bounded above by the limiting number of units of the data traversing the network; the difference between the smallest address whose corresponding unit is contained within the window, and the largest address whose corresponding unit is contained within the window, is unbounded; and, units are allowed to be noncontiguous (see figure 1B; col. 1, lines 37-52; col. 7, line 66-col. 8, line 24; col. 8, lines 58-66; col. 10, lines 55-col. 11, line 11. Note that units S2, S7, and S8 are noncontiguous).

Regarding claims 2-8, Miklos discloses simultaneously adding an amount of units to the window upon the number of units within the window being discovered to be below the limiting number and other limitations described in claims 3-8 (see figure 1B and col. 7, line 66-col. 8, line 24).

Regarding claims 9-10, Miklos discloses the sequentially addressed data corresponds to a contiguous portion of a response requested from the source by the destination and the response is

Art Unit: 2661

the result of an action or process carried out by the source at the request of the destination (see figure 1B).

Regarding claims 11-13, Miklos discloses units are declared to have been lost by virtue of their failure to arrive within some period of time or count of data arrival; sending a request message for one or more units which have been declared lost; and adding the requested units to the window (see figure 1B and col. 3, lines 21-26).

Regarding claim 14, Miklos discloses reducing the limiting number of units within the window as a result of the declaring of one or more units to be lost (see the window size is dynamically change during transmission in col. 11, lines 1-11).

Regarding claim 15, Miklos discloses increasing the limiting number of units within the window (see the window size is dynamically change during transmission in col. 11, lines 1-11).

Regarding claim 16, Miklos discloses a method that controls the transportation of an amount of data over a network, wherein, when the amount of data is viewed as being contiguous, such that a next piece of the amount of data is adjacent to a piece of the amount of data from the perspective of the piece of the amount of data, a window that is viewed as being superimposed upon the amount of data defines a specific portion of the amount data based upon a size of the window and a positioning of the window, the method comprising: allowing non contiguous portions of the amount of data (see figure 1B where S2, S7, and S8 are noncontiguous) to be in transit over the network such that: a first portion of the amount of data that is allowed to be in transit within the network can be viewed as being defined by a first window, a second portion of the amount of data that is allowed to be in transit within the network can be viewed as being defined by a second window, wherein the first and second windows can be viewed as being

Art Unit: 2661

superimposed upon the amount of data such that a third portion of the amount of data that is not in transit within the network exists between the first window and the second window, the second portion having a next piece of the amount of data from the perspective of a piece of the amount of data that is within the third portion; and wherein. 1) if: the next piece from the perspective of the piece within the third portion arrives at its destination causing the third portion to expand; 2) then: a next piece of the amount data from the perspective of the second portion is allowed to be in transit within the network causing the second window to slide (see figure 1B; col. 1, lines 37-44; col. 7, line 66-col. 8, line 24; col. 8, lines 58-66; col. 10, lines 55-col. 11, line 11).

Regarding claims 17-22, Miklos discloses all of the amount of data is to be transported from a server (sender) to a client (receiver) over the network and other limitations as described in claims 18-24 (see figure 1B; col. 1, lines 37-44; col. 7, line 66-col. 8, line 24; col. 8, lines 58-66; col. 10, lines 55-col. 11, line 11).

Regarding claims 23-25, Miklos discloses at least a piece of the amount of data within the first portion is no longer deemed in transit within the network because of the expiration of a timer and the measurement by the timer having exceeded a value results in the declaration that the next piece of the amount of data has been lost (see NACK S2 in figure 1B).

Allowable Subject Matter

5. Claims 26-29 and 42-45 are allowed.
6. Claims 30-41 and 46-57 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

Response to Arguments

7. Applicant's arguments filed 8/17/05 have been fully considered but they are not persuasive. Regarding claim 1, the applicant argued that Miklos fails to disclose the difference between the smallest address whose corresponding unit contained within said window, and the largest address whose corresponding unit is contained within said window, is unbounded. The examiner disagrees because Miklos clearly discloses this limitation as shown, for example, in figure 1B. In figure 1B, the first window contains PDUs S1, S2, and S3, the difference between the smallest address and the largest address is 2. The third window contains PDUs S2, S7, and S8, the difference between the smallest address S2 and the largest address S8 is 6. If PDU S1 was lost instead of S2, then S1 will be retransmitted and the third window will contain S1, S7, and S8. As a result, the difference between the smallest address S1 and the largest address S8 is 7. Therefore, the difference between the smallest address and the largest address is not bounded by 2. In other words, the difference between the smallest address and the largest address are 2, 6, and 7 is **unbounded** as mentioned above. In col. 1, lines 45-52, Miklos teaches that a PDU can be retransmitted until it is successfully received at the receiver and acknowledged at the sender. In this case, the difference between the smallest address and the largest address could be large depending on the network condition. Regarding claim 16, the applicant argued that the claimed limitation allows the difference between the address of the bottom unit and the address of the top unit to be unbounded. The response to the argument used in claim 1 is also applied to claim 16.

Conclusion

Art Unit: 2661

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian D. Nguyen whose telephone number is (571) 272-3084. The examiner can normally be reached on 7:30-6:00 Monday-Thursday.

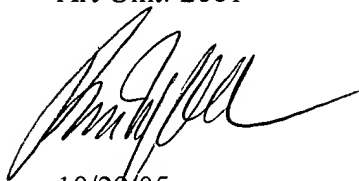
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chau Nguyen can be reached on (571) 272-3126. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Application/Control Number: 09/677,040

Page 8

Art Unit: 2661

A handwritten signature in black ink, appearing to read 'Brian Nguyen', written over the date '10/29/05'.

10/29/05

BRIAN NGUYEN
PRIMARY EXAMINER